

Verne, B. Michael

Item 4(c)

From: [REDACTED]
Sent: Tuesday, May 16, 2006 11:46 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Project Safari



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> VIA EMAIL

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>
> Michael Verne, Esq.
> Premerger Notification Office
> Federal Trade Commission
> 601 Pennsylvania Avenue, N.W.
> Washington, D.C. 20580

> Dear Mr. Verne:

>
> This will confirm our conversation today concerning the
> interpretation of Item 4[c] of the HSR reporting form. We indicated
> that our firm and a corresponding law firm represented the parties to
> a merger agreement that had been executed earlier and would be
> reportable under the HSR statute. After executing the merger
> agreement, each party had sent various communications to shareholders,
> employees, and customers concerning the proposed transaction. We
> asked you to assume that some or all of the communications were
> prepared by or for officers and/or directors and touched upon
> competition, potential for sales growth, or other subjects identified
> in the instructions for Item 4[c].

>
> Based on Informal Staff Opinion 0509001 (September 1, 2005), you
> agreed that such documents would not be covered by Item 4[c]. In
> Informal Staff Opinion 0509001, the staff determined that documents
> otherwise responsive to Item 4[c], but provided to the acquiring
> person's officers and directors after execution of the acquisition
> agreement, need not be included in the acquiring person's HSR filing.
> The staff reasoned that because the agreement had already been
> executed, the acquiring person could not have used such documents to
> evaluate the proposed transaction. In our situation, likewise, the
> merger agreement was executed by both parties before the
> communications in questions were sent to shareholders, employees, or
> customers. The parties could not have used such communications to

> evaluate the proposed transaction.

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> If you believe that we in any way misinterpreted our

> conversation, please let us know immediately. Thank you again for

> your assistance.

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AGREE -
B. [Signature]
5/16/06